(1950) 07 CAL CK 0019

Calcutta High Court

Case No: Appeal Preferred on the 2nd of May, 1927

Lalji Raja and Sons Firm		APPELLANT
	Vs	
The Governor General of India in Council		RESPONDENT

Date of Decision: July 10, 1950

Acts Referred:

- Contract Act, 1872 - Section 151, 152, 161

Citation: 54 CWN 902

Hon'ble Judges: Sen, J; Chunder, J

Bench: Division Bench

Advocate: Bankim Chandra Mukherjee and Muktipada Chatterjee, for the Appellant;Chandra Sekhar Sen and Ajoy Kumar Basu, for the Respondent

Final Decision: Dismissed

Judgement

Sen, J.

The plaintiff firm is the appellant in this case and the appeal arises from a judgment of affirmance. The firm of Gainsingh Ganeshdas booked a consignment of 419 bags or rape seed from Tandilanwala Railway Station in the United Provinces to Bankura. The railway receipt was made out of self. The consignment reached Bankura on the 13th of June 1943. On that date the consignee who was the same person as the consignor did not come to take delivery. The railway receipt it appears had been endorsed by the consignor to the plaintiff and it was in the custody of the Imperial Bank of India. There was a dispute going on between the consignor, Gainsingh Ganeshdas and the plaintiff as a result of which the railway receipt could not be made over to the plaintiff on the 13th or 14th of June 1943. The railway receipt was made over to the plaintiff on or about the 22nd of June. In the meantime the consignor had asked the railway company to show him some consideration because the railway receipt could not be made over to the plaintiff by reason of a dispute between him and the consignor and because the bank would not part with the

railway receipt without payment. It is thus clear that the plaintiff could not take delivery of the goods before the 22nd of June 1943. On that date the plaintiff took part-delivery. Thereafter delivery of the rest of the rape seed was taken on the 3rd of July 1943. The plaintiff then brought this suit claiming damages. It was alleged that the rape seed was left on the platform without any covering and that it was damaged by rain water on the 13th and 14th of June and also on subsequent days. The Court below has awarded damages to the plaintiff for the damage done to the rape seed by rain water during the period 13th of June 1943 to the 14th June 1943. For the remaining period the claim of the plaintiff was refused on the ground that the plaintiff had wrongfully failed to take delivery of the rape seeds within a reasonable time, that is to say, by the 14th of June, 1943 and that railway company were not liable to pay damages for any loss or deterioration of the goods after that date. Against this decision the plaintiff has appealed. There was no cross-objection by the railway company regarding the award of damages for the deterioration caused to the rape seed up till the 14th of June 1943.

2. The only question for determination therefore is whether the railway company is liable to pay any damages to the plaintiff for loss, deterioration or damages caused to the rape seed after the 14th of June 1943. The liability of the railway company in a case of this description is defined in section 72 of the Indian Railways Act which is as follows:

The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act.

3. It is clear from the section that the railway as bailee is bound to take as much care of the goods bailed to it as a man of ordinary prudence would under similar circumstances take of his own goods of the same kind. We are really not concerned in this case as to whether the railway company has taken such care of these goods as it should have taken in accordance with the provisions of section 151 of the Indian Contract Act which is referred to in section 72 of the Indian Railways Act. The real question with which we are concerned is this: Up to what time does the liability of a railway as bailee continue? Does it continue after the time at which delivery should have been taken by the consignee when the consignee wrongfully or without any lawful excuse failed to take delivery?

4. On behalf of the plaintiff appellant it is contended that even if it be held that the consignee refused to take delivery within a reasonable time of the arrival of the goods without lawful excuse, the railway company would still be liable to take such care of the goods as is laid down in section 151 of the Indian Contract Act and that if it fails to take such care it would be liable in damages. It was further argued that the plaintiff did not fail to take delivery within a reasonable time.

5. We shall take up for consideration the second point namely, whether the plaintiff has failed to take delivery within a reasonable time without lawful excuse. The finding of the court below is against the plaintiff. The court below has given cogent reasons for this finding and we have taken the somewhat unusual course of going through the evidence in this matter and we find that delivery has not been taken through the default of the plaintiff and not through any default of the railway company. The railway company was always ready to give delivery, but the plaintiff could not take delivery because the railway receipt was not made over to him till the 22nd of June 1943 owing to differences between him and the consignor. It has been established from the evidence that the consignee knew that the goods had arrived on the 13th of June 1943. There was therefore no impediment in the way of the consignee taking delivery on or about the 13th of June 1943. The failure on the part of the plaintiff to take delivery was therefore due to his own default.

6. Twenty-four hours are more than enough within which delivery should be taken. We hold therefore that the plaintiff in not taking delivery by the 14th June 1943 did not take delivery within a reasonable time and that such failure to take delivery was due to his default.

7. The next point for consideration is whether in spite of such default the railway company would still be liable as bailee. We are of opinion that no such liability can continue after the expiry of a reasonable time within which delivery should be taken. The liability of the railway company as bailee continues from the period when the goods are delivered to them to the period when the goods are ready for delivery. In short, the liability of the railway company is limited to the period of transit or carriage of the goods with the addition of a reasonable period of time for loading the goods and a reasonable period of time which is to be given to the consignee to take delivery. There is nothing in the Railways Act or in any other law in India which would impose the liability of a bailee upon a railway company for any period beyond this time. This question came up for decision in some cases with which we shall now deal. In the case of Joganath Marwari & ors. V. East Indian Railway Co. (1918) 22 C.W.N. 902, a Division Bench of this Court took the view which supports the view that we have taken. At page 903 this is what is said:

The position then would seem to be that the suit must fail either for failure to comply with the provisions of section 77 of the Indian Railways Act or because the goods were at the plaintiff''s risk by reason of their failure to take delivery.

8. The same view has been taken by the High Court of Allahabad in the case of Bengal and North-Western Railway & another v. Mul Chand ILR 42 All. 655 (1920). In the case of Vidya Sagar v. The Governor-General in Council, New Delhi AIR (1949) Lah. 166, the matter was discussed very fully and Mr. Justice Achhru Ram expressed the same view relying upon certain observations made by Mr. Justice v. Harikishen Das Kure Mall (1925) Lahore 370. The observations are as follows:--

It is not the business of the railway administration to work as a Warehouseman or a bailee for hire. Its proper function is that of a public carrier and it is only in connection with the performance of its duty as a carrier that it is held responsible as a bailee. The duty as a carrier is discharged on the arrival of the goods at their destination and it is not for the railway administration to keep the goods after that as a warehouseman or a bailee for hire. The consignee, on the other hand, is expected to take delivery within a time fixed by the rules and if he neglects to do so, the railway administration can claim demurrage and not hire. That being so, its liability to the consignee after the arrival of the goods is not the same as that of a warehouseman or a bailee for hire.

9. The only case which learned Advocate for the appellant could find which supported his view was the case of AIR 1948 65 (Nagpur) . With great respect we are unable to accept the view there expressed and we respectfully agree with the view in the cases decided by this Court, by the Allahabad High Court and by the Lahore High Court.

10. We hold therefore that there was no responsibility on the railway company as a bailee after the consignee was given a reasonable time to take delivery and on his failure to take delivery without reasonable cause; in other words, we hold that the railway company is not liable to any damages for damage caused to the rape seed after the 14th of June, 1943. That being so, we uphold the decision of the court below and dismiss this appeal with costs.

Chunder, J.

I agree.